ASIAN DEVELOPMENT BANK

TAR:REG 33538

REGIONAL TECHNICAL ASSISTANCE
(Financed from the Japan Special Fund)

FOR

REGULATORY SYSTEMS

AND

NETWORKING OF WATER UTILITIES

AND

REGULATORY BODIES

July 2000

ABBREVIATIONS

ADB	–	Asian Development Bank
DMC	–	developing member country
TA	–	regional technical assistance
WSSCC	–	Water Supply and Sanitation Collaborative Council

NOTE

In this report, “$” refers to US dollars.

I. INTRODUCTION

1. This regional technical assistance (TA), Regulatory Systems and Networking of Water Utilities and Regulatory Bodies, has been prepared in support of reforms that the Asian Development Bank (ADB) and other agencies are promoting in the water supply and sanitation sector,[1] and are being endorsed by ADB's developing member countries (DMCs).[2] Several DMCs have expressed an interest in identifying and establishing appropriate forms of regulatory systems to oversee and guide autonomous water supply and sewerage agencies. The World Bank and the Water Supply and Sanitation Collaborative Council (WSSCC)[3] strongly support these initiatives. Although no formal fact-finding was undertaken, it is proposed that 10 DMCs (Bangladesh, the People's Republic of China, India, Indonesia, Malaysia, Nepal, Philippines, Sri Lanka, Thailand, and Viet Nam) actively participate in this TA. The TA framework is attached as Appendix 1.

II. BACKGROUND AND RATIONALE

2. The water supply and sanitation sector in ADB's DMCs has been characterized over the last 20 years by a lack of autonomy extended to water utilities in terms of staffing (salaries and appointments) and financial management (tariffs and approvals for capital expenditure). The control over tariffs by local or other governments, which variously cite elections, lack of utility efficiency, or unaffordability to the poor, as reasons for curtailing tariff revisions, has been extreme and has seriously affected autonomy. This is the main factor in water being treated as a social rather than an economic good. While treated as a social good (i.e., with considerable government subsidy of costs), the funds for making it available publicly pass through government agencies, and investment and maintenance decisions often acquire political overtones. When treated as an economic good, the consumers pay for most of the costs and investments and control the services. Typically, there are three responses to tariff setting by political expediency. The first is a transparent policy on tariffs and cost recovery, which is made available to all, including consumers. The second is a regulatory body that is independent of government, but tasked with implementing the government policy. The third level of defense is a private sector contract that is legal and binding.

3. In effect, a regulatory body is required when public or privately managed water and sewerage systems are functioning. A regulatory body functions as a buffer between potential government domination of a public utility and consumer interests and assures that accepted policy is properly implemented. In privately managed systems, a regulatory body assures that consumers are provided an efficient service at fair cost. This TA is concerned with regulatory bodies because, although so legislated, the water utilities that are public enterprises have not been allowed to exercise their autonomy. Loan covenants on tariffs have invariably run into problems of delayed compliance, which leave the utilities financially weak. When “privatization” emerged as a panacea for ill-managed public water utilities in the 1990s, it was realized that some form of regulation was needed. However, the "regulation by contract" that developed is not working well. It is far better to have a regulatory body established before any privatization contract is awarded, because such a body can assist in the negotiations, making administration

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[1] A complementary regional TA for public-private-community partnerships in urban services for the poor is under preparation. Close collaboration of staff concerned and sharing of relevant findings of the two TAs will be pursued. This TA focuses on regulatory systems for tariff reform while the other TA focuses on how private sector interventions can help the urban poor. The findings of this TA, especially in regard to how regulatory systems will ensure the poor are not disadvantaged, will be fed into the other TA.

[2] The TA first appeared in *ADB Business Opportunities* (Internet version) on 20 January 2000.

[3] A global body based in Geneva.

of the contract better for both sides. At the same time, regulation and some form of benchmarking of utility performance is needed, regardless of privatization. Thus, one country may have the private sector, a national water authority, and local authorities, each operating water supply and sewerage systems, and each in need of some common form of regulation.

4. The DMCs' regulatory bodies in the water supply and sanitation sector are in their infancy. Existing ones were mostly created by contract. In Bangkok, Colombo, and Kathmandu, efforts are being made to set up regulatory bodies. Some of the key questions that have arisen during the course of debate on regulation and that this TA will aim to address are: Should regulatory bodies be multipurpose or just sector specific? Should they be national, provincial, or state bodies? Will every regulatory body be unique or is there a blue print to follow? Who should comprise regulatory bodies? What human and financial resources are needed? From where should they source their funds? What should be their roles and functions?

5. A regional or international agency is needed to assist DMCs in knowledge management concerned with regulatory frameworks and to encourage long-term sustainability of this initiative. WSSCC has promoted the setting up of the water utilities partnership in South Asia under the umbrella of the WSSCC, and is an appropriate agency for this purpose, as it is mostly a facilitator of good practices. One objective is to provide an arrangement for the water utilities in South Asia to develop knowledge and so capacity, through exchange of information, and talking to and learning from each other. The partnership will cover a number of topics but will include governance, public-private partnerships, regulatory frameworks, and benchmarking. ADB and the World Bank have agreed in principle to support this initiative. The executive director of the Melamchi Water Supply Development Board in Kathmandu, Nepal, will be the focal person for the partnership. A stakeholder workshop is planned to be held in Kathmandu, in July 2000. Another objective is to provide a network for regulatory bodies in the region so they can learn from one another and be mutually supportive. This TA is an appropriate vehicle to help introduce regulatory frameworks and benchmarking in the region. By a partnership between ADB and WSSCC, and regulatory body networking, the benefits of this TA will be supported and ADB will be able to promote better regional cooperation in the sector. WSSCC has assured ADB that it will sustain in the long-term the networking initiated under the TA. The rationale for networking is attached as Appendix 2.

III. THE TECHNICAL ASSISTANCE

A. Objective

6. The longer term objectives of this TA are to (i) facilitate the recognition of water as an economic rather than social good, and (ii) promote autonomous and efficient water and sewerage utilities. Both objectives aim to improve water supply and sewerage services in DMCs. The specific objectives of this TA are to (i) help DMC governments establish independent regulatory bodies for the water supply and sewerage sector, and (ii) support a South Asia water utility partnership to promote knowledge management and networking on water supply and sanitation reforms.

B. Scope

7. The TA will have two parts. Part A will consist of three components. The first will be a brief review of existing regulatory frameworks for water supply and sewerage in both developed and developing countries around the world. The review will be followed by presentation of 10 representative case studies. These studies will identify good practices and policies that have

resulted in sound regulatory systems. Lessons will be drawn and conclusions presented in the context of what DMCs might usefully adopt. The second component will entail consultants in the 10 selected DMCs[4] identifying key stakeholders, including government, water utilities, local authorities, private sector, nongovernment organizations, politicians, and consumers; and ascertaining their views on the nature and scope of regulation that is needed, and how it might be implemented. A one-day workshop will be convened to allow stakeholders to interact and reach consensus on some of the topics. Each DMC will prepare its own regulatory systems report. The third component will be a three-day forum in Manila attended by two representatives, one senior government official and a prominent civilian, from each of 20 DMCs. In this forum, the report prepared under the first component will be presented and discussed, together with the reports from the 10 selected DMCs. Thereafter, practical guidelines will be developed for DMC governments to implement regulatory reforms in their countries. Each country will need to have its own unique design for its regulatory arrangements and some may even reject the idea altogether. Staff from the World Bank and other international agencies assisting the water supply and sewerage sector, including WSSCC, will be invited to the forum to share their views. Representatives of the private sector, especially of agencies that have had experience operating in a regulated environment, will also be invited.

8. Part B of the TA will include networking for a South Asia water utility partnership and will be conducted over two years. The TA's support for this activity will include the establishing a website and hiring webmaster, and establishing computerized nodes in six countries for gathering information (national sector coordinator plus equipment) and for annual regional meetings of the participants. Part B will include networking among regional regulatory bodies for the water supply sector. Support will be in the form of computers and staff at each regulatory body office.

9. At the conclusion of the forum, a comprehensive report will be prepared that will encapsulate Part A of the TA. The report will be disseminated widely to governments, civil society, and the private sector. It will be used as a foundation for policy dialogue in DMCs to establish regulatory systems. The report will also feed into a forum proposed to be held under the auspices of a complementary TA on public-private-community partnerships in urban services for the poor (see footnote 1).

C. Cost Estimates and Financing Plan

10. The estimated cost of the TA is $500,000 equivalent. ADB will finance the cost on a grant basis from the Japan Special Fund, funded by the Government of Japan. Approximately 40 percent of the cost is for consulting services; 30 percent for DMC participation; 10 percent for the workshops, forum, reports, and communication; and 20 percent for networking. Details of the cost estimate are in Appendix 3.

D. Implementation Arrangements

11. A domestic consultant, experienced in water supply and sewerage activities in Asia, will be recruited to assist in the day-to-day logistical and organizational aspects of the TA implementation and to work closely with ADB staff. An international individual consultant, sourced from a firm with experience in regulatory arrangements for the water supply and sewerage sector, will be recruited to undertake the study from his or her own office. This will

[4] DMCs were selected on the basis of their experience with regulatory bodies in this sector or potential for introduction of a regulatory body in the near future.

require considerable networking with contacts in a number of countries. One domestic consultant, in each of the 10 selected DMCs will be recruited on an individual basis to identify stakeholders and ascertain their views. The domestic consultants will have a strong background in the water supply and sewerage sector. They will work in collaboration with the lead Government agency in the water supply and sewerage sector in each country.

12. The consulting inputs will be international (4 person-months), and domestic (26 person-months). Outline terms of reference for consulting services are in Appendix 4. The consultants will be engaged by ADB in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB for the engagement of domestic consultants.

13. The TA will be implemented over two years. The study is to be completed in three months. The domestic consultations will be completed over two months in parallel with the study. The material from the study and domestic consultations will be reviewed in Manila by a domestic consultant and ADB staff, and preparations made for the regional forum in months four and five. During the sixth month, the forum will be held and the report printed and disseminated. Part B of the TA, involving the networking of water utilities in South Asia and regulatory bodies, will extend for 18 months beyond the regional forum. Thus, the TA is expected to commence on 1 August 2000 and be completed by 31 July 2002. A measure of the effectiveness of this TA will be the extent to which the 10 participating DMCs have established, or begin to establish, regulatory bodies in the water supply and sanitation sector by 31 July 2002.

IV. THE PRESIDENT'S DECISION

14. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance, on a grant basis, in an amount not exceeding the equivalent of $500,000 for the purpose of Regulatory Systems and Networking of Water Utilities and Regulatory Bodies, and hereby reports such action to the Board.

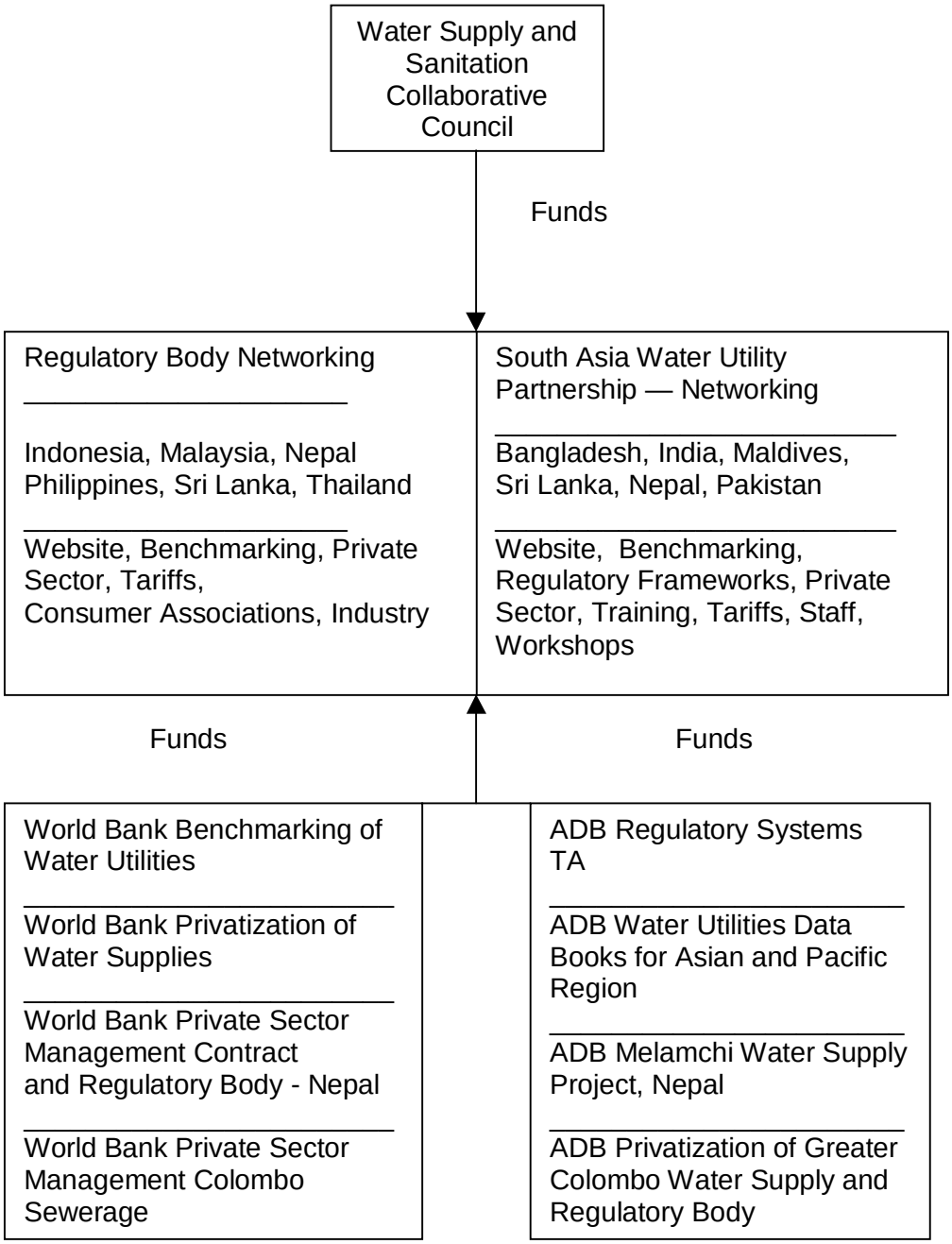
TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Project Targets	Monitoring Mechanisms	Assumptions and Risks
Sector Goals			
Sustainable water supplies in DMCs	Regulatory bodies that facilitate tariff revisions in accordance with government policy	ADB missions	Ownership of DMCs Not all DMCs will agree to regulation
Purpose			
Create autonomous management and development of water supply in DMCs	Independent regulatory bodies created in DMCs Water utility partnership networking in South Asia	Current benchmarked situation – review missions after 2 years Website monitoring	Time needed for acceptance and legislation Sustainability of utility networking Sustainability of regulatory body networking
Components			
1. International Study 2. Country studies (DMCs) 3. Regional forum (ADB) 4. Utility partnership networking 5. Regulatory body networking	10 case studies 10 Country Reports 50 DMC participants 2 year funded program	ADB Staff Domestic consultant Event WSSCC	Good consultant Good communication Good facilitation Good participation
Activities **Inputs**			
International consultant Local consultant Domestic consultants Utility coordinator Utility staff honorariums	4 person-months 6 person-months 20 person-months 18 person-months 20 person-months	ADB staff ADB staff domestic consultant ADB staff ADB staff	Timely implementation with good supervision Selection criteria are agreed
Outputs			
Study Country Workshops regional Forum Utility Partnership Regulatory Body Network	Case studies report Country reports Guidelines report Networking of utilities Networking of regulatory bodies	ADB staff Domestic consultant ADB staff WSSCC WSSCC	Useful lessons learned Participatory approach Good synergy Willingness to participate Willingness to participate

ADB = Asian Development Bank, DMC = developing member country, WSSCC = Water Supply and Sanitation Collaborative Council

(Reference in text: page 1, para. 1)

RATIONALE FOR NETWORKING



(Reference in text: page 2, para. 5)

COST ESTIMATE
($)

Item	Total Cost
1. Consultants	
a. Remuneration	
i. International Consultant	100,000
ii. Domestic Consultants	90,000
b. Reports and Communications	20,000
c. Travel (International Consultant)	5,000
2. Stakeholder Workshops in DMCs	10,000
3. Regional Forum	
a. Participant Travel	115,000
b. Participant Per Diems	30,000
c. Seminar (Venue, Catering)	10,000
4. Water Utility Partnership Networking[a/]	50,000
5. Regulatory Body Networking	50,000
6. Contingencies	20,000
Total	**500,000**

[a/] Includes for a regional webmaster and six national sector coordinators, all supported by computers.
Source: Staff estimate.

(Reference in text: page 3, para. 10)

OUTLINE TERMS OF REFERENCE FOR CONSULTING SERVICES

A. General

1. The regional technical assistance (TA) includes the following consulting services: (i) an international individual consultant to conduct a study and facilitate a regional forum in Manila, (ii) an individual domestic consultant based in Manila to help implement the TA, and (iii) 10 domestic individual consultants, one in each of the 10 selected developing member countries (DMCs) to identify stakeholders and ascertain their views.

B. International Consultant

2. Undertaking a study from his or her home office, the consultant will research literature over the last 10 years on regulatory arrangements for water supply and sewerage in developed and developing countries. An annotated bibliography will be prepared for all relevant materials. The consultant will interview, by e-mail or other means, contacts in different countries, especially including those working in regulatory bodies in the water supply and sewerage sector. A selection of 10 representative case studies will be made and, after Asian Development Bank (ADB) confirms that the proposed study topics are acceptable, the case studies (8-10 pages in length each) will be prepared. The scope of the case studies will include but not necessarily be limited to descriptions of (i) the driving force or enabling environment for establishing the regulatory arrangements and when this was effected; (ii) the relevant legislation required to establish the regulatory body; (iii) the role and functions of the regulatory body; (iv) the composition and selection of the regulatory body; (v) the financial and human resources available to the regulatory body; and (vi) the perceptions of the success or otherwise of the regulatory body since inception, especially as regards its independence and its ability to carry out its mandate. The consultant will also prepare a general report on the findings, making reference to objectives, composition, role, functions, resources, and effectiveness of various regulatory arrangements. In Manila for the three-day forum, the consultant will review domestic consultant reports and assist ADB staff and the consultant to prepare an agenda for the forum and then serve as the chief facilitator of that forum. Finally, the consultant will compile a record of the proceedings of the forum. The expected total input will be 4 person-months.

C. Domestic TA Implementation Consultant (Manila)

3. The consultant will be based in Manila and will act as the focal point of communication to and from the international consultant and the 10 other domestic consultants. The consultant will (i) organize and track the recruitment and administration of the domestic consultants in conjunction with ADB's consulting services division; (ii) review the progress and outputs of the international consultant and the domestic consultants against their terms of reference, and advise ADB staff thereon; (iii) identify and organize all participants for the forum in Manila and make logistical and other arrangements for the forum; (iv) after the forum, prepare and edit for printing, the ADB publication containing the study, DMC consultations, and forum proceedings; and (v) assist in establishing the networking of the utilities and regulatory bodies, including procurement of computers and the recruitment of staff. The expected total input will be 6 person-months.

D. Domestic Consultants (10 DMCs)

4. These consultants will first need to establish what, if any, regulatory arrangements exist or are being prepared in their country for the water supply and sanitation sector. They will then

(Reference in text: page 4, para. 12)

identify stakeholders concerned, such as government officials, water utility management and staff, industrial and domestic water consumers and sewerage users, nongovernment organizations, professional bodies such as institutions of engineers, private sector contractors, local authorities, journalists, funding agencies, etc. The consultants will use a standard format questionnaire (approved by ADB) to ascertain the views of these stakeholders, including identification of factors that have been hampering successful implementation of the project in the sector and how these might be addressed through a regulatory body. A one-day workshop will be convened for these stakeholders to interact with one another in discussing the need for, objectives, composition, role, functions, and resources of a regulatory body for the water supply and sewerage sector. The consultants will prepare a report on their findings and recommend potential candidates for participation in the forum in Manila. The expected total input will be 2 person-months per consultant.